

AMENDED IN ASSEMBLY MAY 20, 2014

AMENDED IN ASSEMBLY APRIL 1, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## ASSEMBLY BILL

**No. 1778**

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**Introduced by Assembly Member Allen**  
**(Coauthor: Assembly Member Ian Calderon)**  
**(Coauthor: Senator Gaines)**

February 18, 2014

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An act to amend Section 17941 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1778, as amended, Allen. ~~Corporation-Income taxes: minimum~~ annual tax: limited liability company: exemption.

Existing law ~~generally~~ imposes an annual ~~minimum franchise tax of \$800 in an amount equal to the minimum franchise tax~~, except as provided, on every limited liability company doing business in this state or registered in this state, as specified. Existing law defines the term “limited liability company,” for purposes of the payment of the annual ~~minimum franchise tax~~, to exclude a limited liability company that is exempt from the payment of the tax and certain fees under other existing law.

This bill would also exclude from that definition a limited liability company that is formed for the exclusive purpose of acquiring and holding title to intangible personal property constituting equity or debt interests, or both, in a single other corporation, limited liability company, or partnership, collecting income therefrom, and turning over the entire

amount thereof, less expenses, to its members, thereby exempting such an entity from that ~~minimum~~ annual tax.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 17941 of the Revenue and Taxation Code  
2 is amended to read:

3 17941. (a) For each taxable year beginning on or after January  
4 1, 1997, a limited liability company doing business in this state,  
5 as defined in Section 23101, shall pay annually to this state a tax  
6 for the privilege of doing business in this state in an amount equal  
7 to the applicable amount specified in subdivision (d) of Section  
8 23153 for the taxable year.

9 (b) (1) In addition to any limited liability company that is doing  
10 business in this state and is therefore subject to the tax imposed  
11 by subdivision (a), for each taxable year beginning on or after  
12 January 1, 1997, a limited liability company shall pay annually  
13 the tax prescribed in subdivision (a) if articles of organization have  
14 been accepted, or a certificate of registration has been issued, by  
15 the office of the Secretary of State. The tax shall be paid for each  
16 taxable year, or part thereof, until a certificate of cancellation of  
17 registration or of articles of organization is filed on behalf of the  
18 limited liability company with the office of the Secretary of State.

19 (2) If a taxpayer files a return with the Franchise Tax Board that  
20 is designated as its final return, the Franchise Tax Board shall  
21 notify the taxpayer that the annual tax shall continue to be due  
22 annually until a certificate of dissolution is filed with the Secretary  
23 of State pursuant to Section 17707.08 of the Corporations Code  
24 or a certificate of cancellation is filed with the Secretary of State  
25 pursuant to Section 17708.06 of the Corporations Code.

26 (c) The tax assessed under this section shall be due and payable  
27 on or before the 15th day of the fourth month of the taxable year.

28 (d) For purposes of this section, "limited liability company"  
29 means an organization, other than the following:

30 (1) A limited liability company that is exempt from the tax and  
31 fees imposed under this chapter pursuant to Section 23701h or  
32 Section 23701x, that is formed by one or more persons under the

1 law of this state, any other country, or any other state, as a “limited  
2 liability company” and that is not taxable as a corporation for  
3 California tax purposes.

4 (2) A limited liability company that is formed for the exclusive  
5 purpose of acquiring and holding title to intangible personal  
6 property constituting equity or debt interests, or both, in a single  
7 other corporation, limited liability company, or partnership,  
8 collecting income therefrom, and turning over the entire amount  
9 thereof, less expenses, to its members.

10 (e) Notwithstanding anything in this section to the contrary, if  
11 the office of the Secretary of State files a certificate of cancellation  
12 pursuant to Section 17707.02 of the Corporations Code for any  
13 limited liability company, then paragraph (1) of subdivision (f) of  
14 Section 23153 shall apply to that limited liability company as if  
15 the limited liability company were properly treated as a corporation  
16 for that limited purpose only, and paragraph (2) of subdivision (f)  
17 of Section 23153 shall not apply. Nothing in this subdivision  
18 entitles a limited liability company to receive a reimbursement for  
19 any annual taxes or fees already paid.

20 (f) (1) Notwithstanding any provision of this section to the  
21 contrary, a limited liability company that is a small business solely  
22 owned by a deployed member of the United States Armed Forces  
23 shall not be subject to the tax imposed under this section for any  
24 taxable year the owner is deployed and the limited liability  
25 company operates at a loss or ceases operation.

26 (2) The Franchise Tax Board may promulgate regulations as  
27 necessary or appropriate to carry out the purposes of this  
28 subdivision, including a definition for “ceases operation.”

29 (3) For the purposes of this subdivision, all of the following  
30 definitions apply:

31 (A) “Deployed” means being called to active duty or active  
32 service during a period when a Presidential Executive order  
33 specifies that the United States is engaged in combat or homeland  
34 defense. “Deployed” does not include either of the following:

35 (i) Temporary duty for the sole purpose of training or processing.  
36 (ii) A permanent change of station.

37 (B) “Operates at a loss” means a limited liability company’s  
38 expenses exceed its receipts.

39 (C) “Small business” means a limited liability company with  
40 total income from all sources derived from, or ~~attributable, to~~

- 1 *attributable to*, the state of two hundred fifty thousand dollars  
2 (\$250,000) or less.  
3 (4) This subdivision shall become inoperative for taxable years  
4 beginning on or after January 1, 2018.  
5 SEC. 2. This act provides for a tax levy within the meaning of  
6 Article IV of the Constitution and shall go into immediate effect.